

CHAPTER 1

ARTICLE 16 — PUBLIC RECORDS

Revised January 13, 2003

13040.1 Policy

All records of the Department of Corrections (CDC) shall be safeguarded, maintained, and disclosed in compliance with the Government Code (GC) Sections 6250, 6275, 6276, et seq., Public Records Act (PRA).

13040.2 Purpose

This article specifies staff responsibilities for the collection, maintenance, and disclosure of records identified as public records.

13040.3 General Review

When a written request is received to provide access to or copies of a CDC record, staff shall look first to the provisions of the PRA in this article to determine if the record may be disclosed. If it is a public record, and the record contains personal information, the employee shall look to the provisions of Department Operations Manual (DOM), Chapter 1, Article 15, Information Practices to determine if the personal information is exempt from disclosure under the Information Practices Act (IPA).

13040.4 Definitions

Public Record - Includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Writing - Any handwriting, facsimile, visual/audio regarding, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or punched cards, discs, drums, and other documents.

13040.5 Security of Records

When the public is inspecting any record, an employee who shall ensure the security and integrity of the record shall directly supervise the inspection. The removal of any document or the altering of any record during a public inspection is prohibited.

Note taking shall be limited in accordance with the provisions of Chapter 1, Article 15, Information Practices.

13040.6 Designation of Public Records Officer

When records are retained in a centralized location, the Warden, General Manager of Prison Industry Authority (PIA), or Regional Parole Administrator (RPA) shall designate an employee as the Public Records Officer (PRO). If records are not maintained in a centralized location, a PRO is not necessary. However, the Warden, RPA, or Field Office Supervisor shall designate an employee to coordinate the functions and responsibilities normally performed by a PRO. All other PRA requests received should be forwarded to the Correspondence Control Unit for review and assignment to the appropriate division/office for response.

13040.7 Public Records Request

When a request for records is submitted on CDC Form 1432, Request to Inspect Public Records, a determination of where the request should go shall be made.

If the request has been mailed, faxed, emailed or delivered to an institution, facility, regional office, etc., that request shall be given to the PRO or designated employee and complied with at that location.

If there are no records at that location and/or a question as to the records or additional records being at a different location, then a copy of the request shall be made and retained to work on, if applicable. The request shall be forwarded to the appropriate division/office or to headquarters, Correspondence Control Unit, for a review and determination as to where the request should be sent.

If the validity of the records being "public" is unknown or not clearly exempt under this article, a copy of the request shall be retained to work on, if applicable, and the request immediately forwarded to the following:

- In headquarters, to the Deputy Director, Legal Affairs Division.
- In a facility, to the Warden.
- In a parole regional office, to the RPA.
- In a local field office, to the supervisor of the local field office.
- In the PIA, to the General Manager.

The designated employee above to whom the request is referred shall determine if the record shall be disclosed as a public record, and inform all employees involved.

If the request is received at headquarters, it shall be immediately given to the Correspondence Control Unit for logging and determination of the appropriate location for the request to go.

13040.7.1 Responsibility of All Employees

All employees who are public liaisons shall be made aware of the procedures established for public inspection of CDC records through this article. Employees shall be sensitive to any request from the public for the review of any records.

13040.7.2 Responsibility of Public Records Officers

The PRO shall:

- Determine records are public in whole or part.
- Respond within 10 days.
- Gather records.
- Provide or coordinate the supervision of records during any inspection by the public.

13040.8 Guidelines for Inspecting Public Records

The CDC's headquarters and each facility, parole region, and field or PIA office shall maintain a supply of CDC Form 1431, Guidelines for the Inspection of Public Records and CDC Form 1432. Upon written/verbal request from any member of the public or any inmate/parolee, a copy of either form shall be provided, free of charge for their use in making a request to inspect public records.

13040.9 Notice to the Public

The CDC's headquarters and each facility, parole region, and field or PIA office shall display a conspicuous notice to the public at each main point of entrance used by the public. The notice shall be no less than 8" x 8" in size, and it shall contain text similar to the following:

NOTICE TO THE PUBLIC

IN COMPLIANCE WITH GOVERNMENT CODE SECTION 6253, GUIDELINES FOR THE INSPECTION OF PUBLIC RECORDS ARE AVAILABLE UPON

REQUEST AND WITHOUT CHARGE AT THE [INFORMATION COUNTER, RECEPTION DESK OR OTHER APPROPRIATE PLACE].

13040.10 Hours of Inspecting Public Records

When public records are disclosed, they shall be made available by appointment for inspection during regular business hours.

13040.11 Where to Make a Request for Public Records

A request to inspect a public record may be mailed, faxed, or personally delivered to any unit or office of CDC, in writing or by completing CDC Form 1432.

13040.12 Specifically Included Public Records

The following CDC records are included in the general category of public records:

- California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3.
- DOM and CDC procedures.
- Director's bulletins and directives.
- Local operational plans and procedures not exempt from disclosure.

13040.13 Disclosure of Information

The CDC shall disclose information about an incident, arrest, or complaint as outlined below, unless the disclosure would endanger the successful completion of an investigation, a related investigation per GC 6254, et seq., or as prohibited by law (see Chapter 3, Article 15, Information Practices).

Disclosure of Information Concerning an Incident

The following information concerning an incident may be disclosed to those persons listed in the next section: Who Can Receive Information Concerning an Incident.

- The name and address (use the business address for CDC employees) of persons involved in or witnesses (other than confidential informants) to an incident.
- The description of any property involved.
- The date, time, and location of the incident and all diagrams.
- The statements of all parties involved in the incident and the statements of witnesses (other than confidential informants).

Who Can Receive Information Concerning an Incident

Only the following shall receive information concerning an incident:

- A judicial, law enforcement, or regulatory agency when required for the performance of their lawful duties.
- The victim of the incident.
- An authorized representative of the victim.
- An insurance carrier against which a claim has been or might be made.
- Any person suffering bodily injury or property damage or loss as a result of the incident caused by:
 - Arson.
 - Burglary.
 - Fire.

- Explosion.
- Larceny.
- Robbery.
- Vandalism.
- Vehicle theft.
- Use of a motor vehicle, aircraft, or water vehicle in a manner which intentionally inflicted death or injury.
- Violation of Vehicle Code 23152 or 23153.
- The immediate act of fleeing the scene of a crime in which the person knowingly and willingly participated.

Disclosure of Information Concerning an Arrest

Only the following information concerning an arrest may be disclosed:

- A description of every individual arrested which includes the following:
 - Full name.
 - Current address.
 - Date of birth.
 - Color of eyes and hair.
 - Sex.
 - Height.
 - Weight.
- Time and date of the arrest.
- Time and date of the booking.
- The location of the arrest.
- The factual circumstances surrounding the arrest.
- The amount of bail set (if any).
- The time and manner of release or the location where the individual is currently being held.
- All charges upon which the individual is being held, including any outstanding warrants from other jurisdictions and parole or probation holds.

Disclosure of Information Concerning a Complaint

The following records concerning a criminal complaint filed by the CDC with outside law enforcement agencies or the courts may be disclosed:

- The time, substance, and location of all complaints received by the CDC.
- The time and nature of the response.
- To the extent the information is recorded, the following may be disclosed:
 - The time, date, and location of the occurrence.
 - The time and date of the report.
 - The name, age, and current address of the victim-**EXCEPT**-the address of the victim of any crime defined by Penal Code 261, 264, 264.1, 273(a), 273(d), 286, 288, 288(a), or 289 shall not be disclosed.
- The factual circumstances surrounding the complaint.

- A general description of any injuries, property, or weapons involved.

13040.14 Exemptions from Disclosure

Guidelines for determining whether a record is exempt from disclosure per GC 6254 and 6275, et seq., include, but are not limited to, the following:

Working Documents

Preliminary drafts, notes, memorandums, etc., which are not retained in the ordinary course of business, are exempt from disclosure provided that the public interest in withholding the record clearly outweighs the public interest in disclosure.

Litigation Records

Records pertaining to pending litigation in which CDC is a party or to claims made under the California Tort Claims Act are exempt from disclosure until the pending litigation or claim has been finally adjudicated or otherwise settled. Records specifically created by the lawyer or agency (attorney work-product) for the litigation are exempt from disclosure.

Unwarranted Invasions of Privacy

Personnel, medical, or similar files are exempt from disclosure if disclosure would constitute an unwarranted invasion of personal privacy or would cause disclosure of exempt personal information under DOM, Chapter 1, Article 15, Information Practices.

Examination Data

Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the Education Code 99150(4), are exempt from disclosure.

Prohibitions in Other Laws

Records are exempt from disclosure when provisions of federal or state law, including, but not limited to, provisions of the Evidence Code 1040, et seq., relating to privilege and of the Information Practices Act, Civil Code 1798, et seq., prohibit disclosure or establish an exemption from disclosure. See also DOM, Chapter 1, Article 15, Information Practices.

Financial Data

Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for a license, certificate or permit applied for are exempt from disclosure.

Complaints, Investigations, and Intelligence Records

Records of complaints to, investigations by, or intelligence information or security files of CDC, or such information in the possession of CDC, but compiled by another state or local agency for correctional, law enforcement, or licensing purposes are exempt from disclosure. This exemption shall include plans and operating procedures that protect the internal security of CDC and its operational units.

Adult Probation Reports

Disclosure of adult probation reports to the public is prohibited.

Analysis and Conclusions of Investigating Officers

The portion of investigative files that reflect the analysis and conclusions of the investigating officer are exempt from disclosure.

Extradition and Clemency Records

All records compiled in the process of extradition or the exercises of executive clemency are exempt from disclosure.

13040.15 Locations for Inspecting Public Records

The location of records that may be inspected under the PRA is left to the discretion of the Director; Deputy Director; Warden; General Manager, PIA; RPA, and/or Field Office Supervisor. There may be exceptions when the distribution, accessibility, and posting requirements are specified in the transmittal letter of a specific record.

13040.15.1 Locations of Public Records for Inmate Inspection

Copies of the specifically included public records shall be located in the inmate law library and/or at other centralized locations at which they shall be available to all inmates.

13040.16 Duplicate Records for Public Inspection

The CDC shall not maintain any record at a specific location solely for the purpose of inspection by the public. There may be instances where it is necessary, desirable, or advantageous to CDC to maintain a duplicate record at centralized or more accessible locations for public inspection purposes. Any such duplicate record shall be as up-to-date and complete as the original or working record used by staff.

13040.16.1 Disclaimer Concerning the Validity of Duplicate Records

When separate copies of a record are maintained exclusively for public and/or inmate inspection, a disclaimer notice shall be affixed to the record's cover or folder. This notice shall read:

"THE CONTENTS OF THIS MANUAL/FILE/RECORD REPRESENTS THE LATEST INFORMATION RECEIVED IN WRITTEN FORM. CONTENTS MAY BE OUTDATED AS THE RESULT OF NEW OR REVISED INFORMATION WHICH HAS NOT BEEN RECEIVED OR FILED."

This disclaimer shall be given verbally when a record, which is maintained exclusively for public and/or inmate inspection and which does not have a written disclaimer attached, is disclosed.

13040.17 Copy Services

Upon written request of CDC Form 1432, Request to Inspect Public Records, and payment of the cost of the reproduction, a copy of the public record, or any portion thereof, shall be provided. Records approved for disclosure shall be reproduced by the office where disclosure is made at a cost of 12 cents per page plus postage.

Upon receipt of the written request and payment, the material shall be reproduced and mailed to the requester.

Note: The employee receiving the funds for providing copies of public records shall explain on the receipt the number of pages at 12 cents per page plus postage for the reproduction of public records.

13040.18 Time Limits for Providing Copies

When a request for a copy of CDC records is received, CDC shall notify the requester within 10 days of receiving the request if CDC will comply with the request. When a determination has been made to release copies of public records to a requester, the copies shall be provided or placed in the U.S. mail to the requester. When a determination is made not to release copies to a requester, CDC shall notify the requester, and the requirements shall be followed as stated under Justification for Denying Access to Records below.

13040.18.1 Extension of Time Limits for Providing Copies

In unusual circumstances, the 10-day time limit for responding to a public record request may be extended by written notice. When CDC determines unusual circumstances exist (see below), the requester shall immediately be notified in writing of the extension, the reasons for the extension, and the date, upon which, the copies are expected to be forwarded to the requester. No such notice shall specify a date that would result in an extension of more than 14 days. For the purpose of this section, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request, the need to:

- Search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which relate to a single request.
- Consult with another agency having a substantial subject matter interest therein. This consultation shall be conducted with all practicable speed.

13040.18.2 Justification for Denying Access to Records

Any time a request under the PRA is denied, CDC shall justify withholding the record. The CDC is required to demonstrate one of the following:

- The requested record is exempt under expressed provisions of the PRA.
- The requested record is exempt under expressed provisions of the IPA.
- On the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by the disclosure of the record.

Any notification of a denial of any request under the PRA shall set forth the names and titles or positions of each person responsible for the denial.

13040.18.3 Appeals of Decisions Denying Access to Records

When a decision is made not to disclose a record, and the Inmate/Parolee requester disagrees, the requester may appeal the decision through the appeals process described in DOM, Chapter 5, Article 53, Inmate/Parolee Appeals.

ANY DENIAL OF A PUBLIC REQUESTER FOR A PRA DISCLOSURE SHOULD BE IMMEDIATELY DIRECTED TO THE LEGAL AFFAIRS DIVISION.

13040.19 Revisions

The Assistant Director, Communications Office, or designee shall be responsible for ensuring that the contents of this article are kept current and accurate.

13040.20 References

EC § 1040, et seq.

EdC § 99150(4).

CC § 1798, et seq.

GC §§ 6250, 6275, 6276, et seq.

California Tort Claim Act.